

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF NEW MEXICO**

VANCE H. SMITH, M.D., and DEBORAH P.  
SMITH, R.N., RVT,

Plaintiffs,

-vs-

No. CIV 92-0641 LH/WWD

EASTERN NEW MEXICO MEDICAL CENTER,  
ORSON TRELOAR, JOHN KIKER, EMMIT  
JENNINGS, MIKE MCGUIRE, RICHARD  
MOONEY, THOR STANGEBYE, KEVIN LOWE,  
MATT FOSTER, and DONALD WENNER,

Defendants.

**MEMORANDUM OPINION AND ORDER**

**THIS MATTER** comes before the Court on Plaintiffs' Motion to Not Reconsider Defendants' Motion for Summary Judgment on Plaintiffs' Equal Protection Claim (Docket No. 423), filed September 13, 1999. The Court, having considered the Motion, the memoranda of the parties, and the applicable law, and otherwise being fully advised, finds the Motion is not well taken and will be **denied**.

On July 17, 1998, the Tenth Circuit remanded this matter for consideration of the merits of Plaintiffs' equal protection claims, stating that "when considering the merits, the district court may grant summary judgment in favor of the defendants if, as they claim, the evidence submitted by the Smiths to resist summary judgment would be inadmissible at trial, or if summary judgment would be

appropriate for any other reason.” *Smith v. Eastern N.M. Med. Ctr.*, No. 97-2164, 1998 WL 440453, at \*6.

The Court has held several status conferences and hearings since remand. At the April 15, 1999, status conference, Defendants, who had earlier indicated they intended to file additional dispositive motions, took the position that their Motion for Summary Judgment on Plaintiffs’ Equal Protection Claim (Docket No. 378), filed July 12, 1996, the subject of the Tenth Circuit’s latest remand order, remained before the Court. Plaintiffs questioned this and have filed their Motion to Not Reconsider.

Basically, Plaintiffs contend that because of the nature of their claim and its elements, summary judgment is inappropriate, would not promote just determination of the cause, and would be unfair. (Pls.’ Mot. at 1.) Plaintiffs also contend that the Motion should not be heard because on the last appeal Defendants asked the Tenth Circuit to decide the Motion on its merits, in addition to reviewing this Court’s ruling based on law of the case doctrine. (Reply Br. of Pls. at 2.)

The Court first notes that although the Tenth Circuit may have been presented with the opportunity to rule on the merits of Defendants’ Motion for Summary Judgment, it clearly declined to do so. Additionally, whether summary judgment on Plaintiffs’ equal protection claims is appropriate, fair, and serves the interests of justice are issues to be considered in addressing the merits of Defendants’ Motion. Thus, the Court will deny Plaintiffs’ Motion to Not Reconsider Defendants’ Motion for Summary Judgment on Plaintiffs’ Equal Protection Claim.

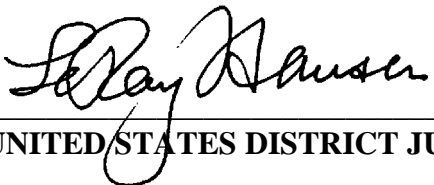
As Plaintiffs have declined the Court’s invitation to supplement their responses to Defendants’ Motion for Summary Judgment on Plaintiffs’ Equal Protection Claim, (*see* Pls.’ Br. Supp. Their Mot.

at 8-9 (citing Pls.' counsel's letters to the Court dated May 13, 1999, and August 23, 1999)), the Motion for Summary Judgment will be set for oral argument.

**IT IS HEREBY ORDERED** that Plaintiffs' Motion to Not Reconsider Defendants' Motion for Summary Judgment on Plaintiffs' Equal Protection Claim (Docket No. 423), filed September 13, 1999, is **DENIED**.

**IT IS FURTHER ORDERED** that the hearing set for Thursday, March 2, 2000, at 2:30 p.m., on Plaintiffs' Motion to Not Reconsider Defendants' Motion for Summary Judgment on Plaintiffs' Equal Protection Claim is **VACATED**.

**IT IS FURTHER ORDERED** that Defendants shall **file** their highlighted compilation of exhibits in support of their Motion for Summary Judgment on Plaintiffs' Equal Protection Claim, a courtesy copy of which previously was supplied to the Court, within **ten (10) days** of entry of this Order.

  
UNITED STATES DISTRICT JUDGE